

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|------------------------------|---|----------------------------|
| BARRY DWAYNE MINNFEE, | § | |
| TDCJ NO. 1300468, | § | |
| | § | |
| Petitioner, | § | |
| | § | |
| v. | § | |
| | § | CIVIL ACTION NO. H-14-2837 |
| WILLIAM STEPHENS, Director, | § | |
| Texas Department of Criminal | § | |
| Justice, Correctional | § | |
| Institutions Division, | § | |
| | § | |
| Respondent. | § | |

MEMORANDUM OPINION AND ORDER

Barry Dwayne Minnfee, a TDCJ inmate, filed a Petition for a Writ of Habeas Corpus By a Person in State Custody challenging the validity of his incarceration pursuant to a state felony conviction (Docket Entry No. 1). State v. Minnfee, No. 49,678-D (320th Dist. Ct., Potter County, Tex., May 2, 2005). Minnfee has already filed a habeas petition in which the State's Office of the Attorney General has been ordered to file a response. Minnfee v. Stephens, No. H-14-2304 (S.D. Tex. filed Aug. 11, 2014). The petitions filed in each action challenge the same state court conviction and raise the same issues. Minnfee cannot present the same claims twice. 28 U.S.C. § 2244(b)(1); see also United States v. Tubwell, 37 F.3d 175, 178 (5th Cir. 1994).

Therefore, this action is **DISMISSED** without prejudice to Minnfee's right to seek relief in Civil Action No. H-14-2304.

The Application to Proceed In Forma Pauperis (Docket Entry No. 2) is **GRANTED**.

The Clerk will provide a copy of this Memorandum Opinion and Order dismissing this action to the petitioner, and will provide a copy of the Petition and this Memorandum Opinion and Order to the respondent and the attorney general by providing one copy to the Attorney General of the State of Texas.

SIGNED at Houston, Texas, on this 17th day of November, 2014.

A handwritten signature in black ink, appearing to read 'S. Lake', is written over a horizontal line.

SIM LAKE
UNITED STATES DISTRICT JUDGE